HIGH COURT OF CHHATTISGARH, BILASPUR

Transfer Petition(Cr.) 03/2007

PETITIONERS

1. Usha Tripathi W/o Shri Chakradhar Tripathi, aged about (at present) 34 years.
2. Vishesh Tripathi, (Minor) through his natural guardian/mother Usha Tripathi, aged about 34 years,

Both are residents of Ramanujganj Road, Ambikapur, District-Surguja(CG)

Versus

RESPONDENT

Chakradhar Tripathi s/o Shri Rajkumar Tripathi, aged about 33 years, R/o Shantipara Batauli, temporary R/o (as mentioned in the order sheets) house of Santosh Pandey, behind Women's Hospital, Darripara, Ambikapur at present R/o Mohalla-Gangapur Namnakala of Ambikapur, District-Surguja(CG)

Appearance:

Shri Manoj Mishra, counsel for the petitioners.

ORAL ORDER
(15.06.2007)

SUNIL KUMAR SINHA, J.

Heard on admission.

This petition has been filed for transfer of MJC No.34/2006, pending before the Family Court, Ambikapur.

It is stated that the said matter is under Section 125 Cr.P.C.

Learned counsel for the petitioners argues that the Family Court had dismissed the aforesaid case in default on 5.9.2006 on account of absence of the petitioners and when, later on, the petitioners appeared on the same day and moved an application for its restoration, it was disposed off on 13.4.2007 and in this manner, according to learned counsel for the petitioners, an

(58)

inordinate delay was caused by the Family Court in disposal of the said application, which renders apprehension in the mind of petitioners that they will not get justice from the said Court.

I have heard learned counsel for the petitioners at length and have also gone through the records of the transfer petition.

The law with regard to transfer of cases is well settled. The Apex Court held in the matter of ***Gurucharan Dass Chadha – Vs- State of Rajasthan, AIR 1966 S.C. 1418*** that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. The Apex Court said that a petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. The Apex Court further held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. The Apex Court also said that to judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

It was further held by the Apex Court in the matter of ***Mrs. Maneka Sanjay Gandhi and another –Vs- Miss Rani Jethmalani, AIR 1979 S.C. 468*** that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievance. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant

environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. The Apex Court, in the facts and circumstances of the case, said that the grounds for the transfer have to be tested on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. It further said that even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

If we apply the above principles in the facts and circumstances of the present case, it does not appear to me that the apprehension entertained by the petitioners is genuine and the same can be treated as a ground for transfer of the case from the said Court.

In the opinion of this Court, no case for transfer of the MJC is made out on the ground raised by the petitioners.

The petition has no merit and the same is dismissed at the motion stage itself.

Sd/-
SUNIL KUMAR SINHA
Judge

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